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IN THE

Supreme Court of the United States

No. ~~520~~ 518 October Term, 1948

ATLANTIC FREIGHT LINES, INC.,
Petitioner

v.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA and SUPPORTING BRIEF

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To
THE SUPERIOR COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petition of Atlantic Freight lines, Inc., respectfully shows:

I. SUMMARY STATEMENT OF THE MATTER INVOLVED

This is a Petition for Writ of Certiorari to the Superior Court of Pennsylvania to obtain a review of a decision of that Court affirming an order of the Pennsylvania Public Utility Commission.

Petitioner, Atlantic Freight Lines, Inc., is a Pennsylvania corporation, with its principal place of business at 703 Second National Bank Building, Uniontown, Pennsylvania, and is engaged in the business of transporting property for compensation, exclusively in interstate commerce. It holds Certificate of Public Convenience and

Necessity Number MC77477 issued by the Interstate Commerce Commission (R. 185a-193a) to operate in interstate commerce on various routes including a certain route in Pennsylvania, Maryland and New Jersey, with intermediate pick-up and delivery points from Pittsburgh, Pennsylvania to Newark, New Jersey. Among these intermediate points is Philadelphia, Pennsylvania.

The Pennsylvania Public Utility Commission, on October 28th, 1946, issued a complaint against your petitioner for alleged violation of Article II, Section 201 (b) of the Pennsylvania Public Utility Law, Act of May 28th, 1937, P. L. 1053 (66 P.S. §1121), and amendments thereto, which makes it unlawful for any public utility "to begin to offer, render, furnish, or supply service within" Pennsylvania without first obtaining a Certificate of Public Convenience from the Pennsylvania Public Utility Commission. The Pennsylvania Public Utility Commission alleged that the following facts constituted intrastate transportation, and as such, illegal because petitioner does not hold any Certificate of Public Convenience to engage in intrastate transportation issued by the Pennsylvania Commission:

> "On or about August 17, 1946, Atlantic Freight Lines, Inc., did transport for compensation 30,000 pounds of sugar in a certain tractor and trailer from Philadelphia, Pennsylvania, to McKeesport, Pennsylvania, and said sugar was transported from Philadelphia over U. S. Highway 1 to Baltimore, Maryland, thence over U. S. Highway 40 through Maryland and Pennsylvania to Uniontown, Pennsylvania, thence over Pennsylvania Highway 51 to Pittsburgh, Pennsylvania, thence over Pennsylvania Highway 30 to McKeesport, the point of destination." (R. 235a).

After making this fact finding, which is undisputed, the Pennsylvania Commission added "this route is one of the

authorized routes contained in (petitioner's) Interstate Commerce Commission Certificate." (R. 241a).

The route, as set forth in the Interstate Commerce Commission Certificate is:

"Between Pittsburgh, Pa. and Newark, N. J.

From Pittsburgh over Pennsylvania Highway 51 to Uniontown, Pa., thence over U. S. Highway 40 to Baltimore, Md., and thence over U. S. Highway 1 to Newark, and return over the same route.

Service is authorized to and from the intermediate points of Uniontown and Philadelphia, Pa., Baltimore, Md., Trenton, N. J., those in Pennsylvania within 20 miles of Pittsburgh, and those within 25 miles of New York, N. Y., and the off-route points of East Riverton, N. J., and those in Pennsylvania within 20 miles of Pittsburgh." (R. 219a).

It is admitted that McKeesport is within 20 miles of Pittsburgh. (R. 159a).

Additional material facts are accurately stated by Commissioner (former Judge) Houck of the Pennsylvania Public Utility Commission in his dissenting opinion, as follows:

"The facts necessary to a decision on the point involved are not in dispute. The route used by respondent in this transportation was established by respondent's predecessor in 1932. On December 2, 1935, respondent's predecessor applied to the Interstate Commerce Commission for a certificate of public convenience and necessity to operate over certain routes of which this is one. The application was under the so-called "Grandfather Clause" in the Federal Motor Carrier Act of 1935, section 206 (a), upon the ground that on June 1, 1935, and thereafter, it had been engaged in bona fide operation as a common carrier by motor vehicle in interstate commerce over this and other routes.

Finally, after extensive litigation of which the Pennsylvania Commission had notice but did nothing in opposition to the granting of the certificate, the Interstate Commerce Commission, on October 8, 1945, filed its report in which it specifically found as a fact that respondent's predecessors were, on June 1, 1935, and they and Atlantic Freight Lines, Inc., as successor in interest, continuously since have been in bona fide operation as a common carrier by motor vehicle in interstate commerce over the route in question. Accordingly, a certificate of public convenience and necessity was granted by the Interstate Commerce Commission authorizing transportation in interstate commerce over the route here in question. Under its charter, respondent is limited to transportation in interstate commerce, and it holds no certificate from the Pennsylvania Public Utility Commission. Under these facts, the ultimate question for determination is whether the Pennsylvania Commission may prohibit the respondent from carrying property originating at a point in Pennsylvania for delivery at another point in Pennsylvania over a route partly in Maryland; transportation over this route having been authorized by the Interstate Commerce Commission." (R 251a-252a).

The majority of the Pennsylvania Commission answered this question "Yes". It found that the shipment was intrastate transportation, that the use of the authorized interstate route was a subterfuge to evade Pennsylvania laws, and it issued an order directing petitioner to forthwith cease and desist from rendering service as a motor carrier in intrastate commerce, except as permitted by a Certificate of Public Convenience issued by the Pennsylvania Commission (R. 250a). Petitioner has no such certificate. The Pennsylvania Commission concedes that Pennsylvania law does not require Petitioner to obtain

a Pennsylvania Certificate in order to engage in interstate transportation over Pennsylvania highways.

From the order of the Pennsylvania Public Utility Commission, your petitioner appealed to the Superior Court of Pennsylvania which affirmed the order of the Commission. (R. 283-289). Petitioner then filed in the Supreme Court of Pennsylvania a Petition for Allowance of an Appeal from the judgment of the Superior Court (R. 290-294), which was refused. Petitioner now seeks a review and reversal of the judgment of the Superior Court of Pennsylvania in this Court.

II. JURISDICTION

1. The jurisdiction of this Court is invoked under the Judicial Code, Section 237 (b) as amended by the Act of February 13, 1925, c. 229, 43 Stat. 937 (28 U. S. C. A. §344).

2. The date of the judgment of the Superior Court of Pennsylvania to be reviewed is July 27, 1948 (R. 289). A timely Petition for Allowance of an Appeal to the Supreme Court of Pennsylvania was refused on September 29, 1948 (R. 294). On December 3, 1948, by order signed by Mr. Justice Burton, the Supreme Court of the United States extended the time for filing a Petition for Writ of Certiorari to and including February 26th, 1949. (R. 319).

3. The following authorities sustain the jurisdiction of this Court: *Illinois Steel Co. v. Baltimore & Ohio R. Co.* (1944) 320 U. S. 508; *Brooklyn Savings Bank v. O'Neil* (1945) 324 U. S. 697, rehearing denied 325 U. S. 893; *U. S. Supreme Court Rule* 38, par. (5) (a).

4. This case is substantial in character. The order of the Pennsylvania Public Utility Commission threatens Petitioner's existence as a common carrier by motor vehicle limited by its charter to engaging in interstate commerce.

The order prohibits Petitioner from accepting for transportation goods which the terms of Petitioner's Interstate Commerce Commission Certificate require Petitioner to acccept and transport. The decision in this case will vitally affect other motor vehicle carriers operating within Pennsylvania under similar Interstate Commerce Commission certificates. It denied to Petitioner its rights under the Federal Motor Carrier Act of 1935 and invades Federal jurisdiction over interstate commerce.

III. QUESTIONS PRESENTED

1. In view of Article I, Section 8, and Article VI of the Constitution of the United States, is not the finding by the Interstate Commerce Commission (that petitioner's carriage of freight between the Pittsburgh, Pennsylvania area and Philadelphia, Pennsylvania, via a prescribed route running through Pennsylvania and Maryland, constitutes bona fide interstate commerce) a finding which must be accepted by the Pennsylvania Public Utility Commission?

2. Did not the transportation of freight for compensation between two points in Pennsylvania via a route running through Pennsylvania and Maryland for which route petitioner holds a certificate of public convenience and necessity issued by the Interstate Commerce Commission constitute bona fide interstate commerce and exempt such transportation from regulation by the Pennsylvania Public Utility Commission?

3. Does not the specific act finding by the Interstate Commerce Commission and the certificate of public convenience and necessity issued by it both authorize and require Petitioner as a common carrier by motor vehicle to accept freight in Philadelphia, Pennsylvania, and transport it over the prescribed interstate route and deliver it in McKeesport, Pennsylvania?

IV. REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The question, whether the transportation of goods by motor carrier between two points in the same state through another state, via an authorized interstate route as defined in a final certificate of public convenience and necessity issued by the Interstate Commerce Commission, can be prohibited by a state utility commission is an important question of Federal constitutional law which has not as yet been, but should be, settled by this Court.

2. The question raised by this case involves an important question of Federal constitutional law and requires a determination of the respective spheres of jurisdiction of the Interstate Commerce Commission and a state utility commission over interstate carriers by motor vehicle; and the precise question presented in this case has never been decided by any Federal Court or any state appellate court in any other case. The question is one of such great public importance that it should be decided by this Court.

3. The question of the scope of Petitioner's rights and duties under the terms of the final Certificate of Public Convenience and Necessity issued to it by the Interstate Commerce Commission is an important question of Federal law which has not been decided by this Court or by any Circuit Court of Appeals.

4. The finding of the Interstate Commerce Commission that petitioner was engaged in "bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce" over the route involved in these proceedings was binding upon the Pennsylvania Public Utility Commission and the Superior Court of Pennsylvania, and precluded a contrary finding that transportation over said route was intrastate commerce.

5. The transportation held to be intrastate by the Pennsylvania Public Utility Commission is within the statutory definition of interstate commerce and exempt from state regulation and control: Part II of Interstate Commerce Act, Feb. 4, 1887, c. 104; Part II, §201, as added Aug. 9, 1935, c. 498; 49 Stat. 543 and amended Sept. 18, 1940, c. 722; Title I, § 15, 54 Stat. 919 (49 U. S. C. A. § 303 (a) (10)).

Wherefore, your Petitioner prays that a writ of certiorari be issued under the seal of this Court directed to the Superior Court of Pennsylvania, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Superior Court of Pennsylvania, had in the case numbered and entitled on its docket No. 98, October Term, 1948, Atlantic Freight Lines, Inc., Appellant, v. Pennsylvania Public Utility Commission, to the end that this cause be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of the said Superior Court of Pennsylvania be reversed by this Court, and for such further relief as to this Court may seem proper.

LAURENCE H. ELDREDGE,

DEAN D. STURGIS,

Attorneys for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I. OPINION OF THE COURT BELOW

Pennsylvania Public Utility Commission v. Atlantic Freight Lines, Inc. (1948),—Pennsylvania Public Utility Commission Reports—, (Complaint Docket No. 14174) (R. 231a-250a); Atlantic Freight Lines, Inc. v. Pennsylvania Public Utility Commission (1948), 163 Pa. Superior Ct. 215, 60 A. 2d 589 (R. 283-289).

II. JURISDICTION

State under heading II in the Petition and said statement, in the interest of brevity, is adopted and made part of this brief.

III. STATEMENT OF THE CASE

Stated under the heading I in the Petition and said statement, in the interest of brevity, is adopted and made part of this brief.

IV. SPECIFICATION OF ERRORS

1. The Superior Court of Pennsylvania erred in holding that the Interstate Commerce Commission had not assumed jurisdiction of Petitioner's transportation by motor carrier between two points in Pennsylvania through Maryland, except as part of a haul from its origin in one state to its destination in another state.

2. The Superior Court of Pennsylvania erred in holding that the Certificate of Public Convenience and Neces-

sity issued to the Petitioner by the Interstate Commerce Commission did not authorize the transportation of goods between prescribed points of origin and delivery in Pennsylvania over Pennsylvania and Maryland highways.

3. The Superior Court of Pennsylvania erred in holding that the Pennsylvania Public Utility Commission had jurisdiction to determine (after a contrary determination by the Interstate Commerce Commission) that transportation, over the route used in this case was intrastate.

4. The Superior Court of Pennsylvania erred in holding that the Pennsylvania Public Utility Commission could properly find that the transportation of goods between Philadelphia, Pennsylvania, and McKeesport, Pennsylvania, via Pennsylvania and Maryland routes was a subterfuge to evade state regulation.

5. The Superior Court of Pennsylvania erred in affirming the order of the Pennsylvania Public Utility Commission.

V. ARGUMENT

Summary

POINT A. This case involves the construction and scope of a specific fact finding as to bona fide interstate commerce by the Interstate Commerce Commission and a determination of the rights and duties of a motor carrier engaged in interstate commerce to whom the Commission has issued a final Certificate of Public Convenience and Necessity. It also involves the question whether transportation by motor carrier between two points in the same state through another state via an authorized interstate route as defined in a final Certificate of Public Convenience and Necessity issued by the Interstate Commerce Commission can be prohibited by a state utility commission. These are important questions of Federal Constitutional law as

to the respective spheres of jurisdiction of the Interstate Commerce Commission and a state utility commission over interstate motor carriers which have not been settled by this Court.

POINT B. The transportation held to be intrastate is interstate under the definition of Congress and of this Court.

POINT A.

THIS CASE INVOLVES THE CONSTRUCTION AND SCOPE OF A SPECIFIC FACT FINDING AS TO BONA FIDE INTERSTATE COMMERCE BY THE INTERSTATE COMMERCE COMMISSION AND A DETERMINATION OF THE RIGHTS AND DUTIES OF A MOTOR CARRIER ENGAGED IN INTERSTATE COMMERCE TO WHOM THE COMMISSION HAS ISSUED A FINAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY. IT ALSO INVOLVES THE QUESTION WHETHER TRANSPORTATION BY MOTOR CARRIER BETWEEN TWO POINTS IN THE SAME STATE THROUGH ANOTHER STATE VIA AN AUTHORIZED INTERSTATE ROUTE AS DEFINED IN A FINAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ISSUED BY THE INTERSTATE COMMERCE COMMISSION CAN BE PROHIBITED BY A STATE UTILITY COMMISSION. THESE ARE IMPORTANT QUESTIONS OF FEDERAL CONSTITUTIONAL LAW AS TO THE RESPECTIVE SPHERES OF JURISDICTION OF THE INTERSTATE COMMERCE COMMISSION AND A STATE UTILITY COMMISSION OVER INTERSTATE MOTOR CARRIERS WHICH HAVE NOT BEEN SETTLED BY THIS COURT.

On October 8th, 1945, the Interstate Commerce Commission found as a fact "That applicant's predecessors were

on June 1, 1935, and the predecessors and applicant continuously since have been, except for an interruption in service over which they had no control, in bona fide operation as a common carrier by motor vehicle, in interstate or foreign commerce, of the commodities, between the points, over the route, and serving the intermediate and off-route points as specified in Appendix C" (R. 213a). Appendix C specifies as one of the routes (and it is marked No. 3) "Between Pittsburgh, Pa., and Newark, N. J.: From Pittsburgh over Pennsylvania Highway 51 to Uniontown, Pa., thence over U. S. Highway 40 to Baltimore, Md., and thence over U. S. Highway 1 to Newark. Intermediate points: Uniontown and Philadelphia, Pa., all points in Pennsylvania within 20 miles of Pittsburgh . . ." (R. 217a, 219a). It is admitted that McKeesport, Pennsylvania, is within 20 miles of Pittsburgh (R. 159a).

The Interstate Commerce Commission issued a Certificate of Public Convenience and Necessity authorizing transportation "From Pittsburgh . . . to . . . the intermediate points of . . . Philadelphia . . ." (R. 219a).

The Certificate of Public Convenience issued to Petitioner by the Interstate Commerce Commission provides that it "is made a condition of this certificate that the holder thereof shall render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of this certificate" (R 192a).

Petitioner submits that the Interstate Commerce Commission has both authorized and directed Petitioner to provide the transportation service which the Pennsylvania Public Utility Commission prohibits.

Commissioner Houck said in his dissenting opinion: "The Commission's order, which attempts to prohibit respondent from operating over the route included in its certificate issued by the Interstate Commerce Commission, necessarily involves the proposition that we have the power

to interfere with an interstate movement, even though the field has been taken over by the federal government. The vital fact in the disposition of this case is the finding by the Interstate Commerce Commission that respondent's operation was a bona fide operation. This is the fact which distinguishes the present case from those relied on by the majority. . . . The respondent has been authorized by the federal Commission to use the route in question and that upon a finding that its operation was bona fide. In my judgment, when the federal Commission decided that question, the matter passed from the control of the State" (R. 255a, 256a). He added: "It seems to me an intolerable situation to have the Interstate Commerce Commission on one hand decide, after extensive litigation, that the use of a particular route in interstate commerce has been bona fide and to grant a certificate accordingly, and then from time to time have the State Commission investigate the same issue and reach a contrary decision. Such procedure does not resolve difficulties, it only increases them" (R. 257a-258a).

This Court is the only tribunal which can finally determine the respective spheres of jurisdiction of the Interstate Commerce Commission and a state utility commission over motor carriers engaging in interstate commerce. This is a comparatively new field of law in which there are few precedents. The "intolerable situation" in which Petitioner finds itself, and in which other carriers may find themselves, is due to the lack of a controlling decision in this Court. Since the enactment of the Federal Motor Carrier Act of 1935 this Court has never passed upon a case in which the Interstate Commerce Commission has made a specific fact finding concerning "bona fide operation" in interstate commerce and has, after hearings, issued a *final* Certificate of Public Convenience and Necessity. What scope and effect does such a fact finding have? What is the effect of final action by the Interstate Commerce Commission, and the issuance of a final Certificate, as distinct from a temporary

Certificate issued during the pendency of an application for a Certificate? These are vitally important questions today in the law of motor carrier transportation. They arise in this case. They need to be answered authoritatively by this Court as a guide to state utility commissions in their dealings with motor carriers who hold final Interstate Commerce Commission Certificates.

Article I, Section 8 of the *Constitution of the United States* gives Congress power "to regulate commerce with foreign nations and among the several states" and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers . . ." It cannot be disputed that the federal government has supreme power to regulate interstate commerce, and that necessarily includes the power to determine what is interstate commerce which is the subject of regulation. In *Eichholz v. Public Service Commission* (1939) 306 U. S. 268, this Court upheld the jurisdiction of the Missouri Commission where the transportation was from St. Louis, Missouri to Kansas City, Missouri, via Kansas City, Kansas, saying in its opinion:

> "When the Commission revoked the permit, the Interstate Commerce Commission *had not acted* upon appellant's application under the Federal Motor Carrier Act and *meanwhile* the authority of the State body to take appropriate action under the State law to enforce reasonable regulation of traffic upon the state highways had not been superseded." (page 273).
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> * * * * * *
>
> "We may assume that Congress could regulate interstate transportation of the sort here in question, whatever the motive of those engaging in it. But *in the absence of* the exercise of federal authority, and in the light of local exigencies, the state is free to act in order to protect its legitimate interest, even though interstate commerce is directly affected." (p. 274) (Italics added.)

In this language there is an implication that where the Interstate Commerce Commission has acted and after full hearing has declared (as in this case) that the transportation in question is bona fide interstate commerce, the authority and jurisdiction of the state regulatory body has been superseded.

In 1935, Congress passed what is familiarly known as the Federal Motor Carrier Act and gave to the Interstate Commerce Commission jurisdiction over motor carriers: *Part II* of the *Interstate Commerce Act, February 4, 1887, C. 104, Part II, Section 201, as added Aug. 9, 1935, C. 948, 49 Stat. 543* and amended Sept. 18, 1940, C. 722, Title I, Section 15, 54 Stat. 919 (49 U. S. C. A. Section 301 et seq.). Section 206(a) of this Act provided that no common carrier by motor vehicle shall engage in interstate commerce unless it holds a Certificate of Public Convenience and Necessity issued by the Commission. There follows a provision which is commonly known as the "Grandfather Clause" which provides that "if any such carrier or predecessor in interest was in *bona fide operation* as a common carrier by motor vehicle on June 1st, 1935, over the route or routes or within the territory for which application is made and has so operated since that time . . . the Commission shall issue such Certificate."

In *McDonald v. Thompson* (1939) 305 U. S. 263, this Court construed the Act and said at page 266:

> ". . . The expression, 'in bona fide operation', suggests *absence of evasion*, excludes the idea that mere ability to serve as common carrier is enough, includes actual rather than potential or simulated service and in context implies recognition of the power of the state to withhold or condition the use of its highways in the business of transportation for hire. Plainly the proviso does not extend to one operating as a common carrier on public highways of a State *in defiance of its laws*." (Italics added.)

In accordance with the provision of the Federal Motor Carrier Act, the predecessor in interest of Atlantic Freight Lines, Inc., your petitioner, applied to the Interstate Commerce Commission for a Certificate of Public Convenience and Necessity under the "Grandfather Clause". Included among the routes covered in such application was the route in question in this case. Objection was made to the granting of this Certificate by various other carriers who denied that Petitioner's predecessor had been engaged in interstate commerce over certain specified routes, one of which is the route herein questioned. The matter was then litigated and the Commission decided the question in favor of Atlantic Freight Lines, Inc., and its predecessor (R. 203a-221a).

It is submitted that this finding by the Interstate Commerce Commission is conclusive and controlling. The federal power in the field of interstate commerce is paramount and Congress has vested in the Interstate Commerce Commission the power of determining when interstate commerce is "bona fide". When the Interstate Commerce Commission makes such a finding, no state body can thereafter find to the contrary.

Counsel for Petitioner have not found any case wherein it appeared that the Interstate Commerce Commission had in a contested proceeding found as a fact that the transportation in question was bone fide interstate commerce. Therefore, it is submitted that this case presents an important question of federal constitutional law which has not yet been determined by this court. It is urged that this question is of sufficient importance to justify its consideration by this Court, particularly as the decision of the Pennsylvania Public Utility Commission, affirmed by the Superior Court, is contrary to the implication in the *Eichholz* case, in this Court: Supreme Court Rule 38, par. (5) (a).

The law is clear that where a decision of the state court rests on a determination of federal law and on a misconception of federal law, this Court has power to de-

termine the federal question on which the state court based its decision and thereafter to remand the case to the state court for further proceedings. *State Tax Commission v. VanCott* (1939) 306 U. S. 511; *Standard Oil Co. of California v. Johnson* (1942) 316 U. S. 481.

The determination of the effect to be accorded a finding of the Interstate Commerce Commission in a collateral proceeding is purely a federal question.

POINT B.

THE TRANSPORTATION HELD TO BE INTRASTATE IS INTERSTATE UNDER THE DEFINITION OF CONGRESS AND OF THIS COURT.

The transportation in this case was between two points in Pennsylvania over a route which traversed Pennsylvania and Maryland highways. It is well settled that transportation between two points in the same state which goes through another state is interstate commerce:

> "It is elementary and well settled that there can be no divided authority of interstate commerce, and that the acts of Congress on the subject are supreme and exclusive. Transportation from Oxly to St. Louis over the route partly within and partly outside of Missouri is interstate commerce." *Missouri Pacific Railroad Co. v. Stroud* (1925) 267 U. S. 404, 408.

In *Central Greyhound Lines, Inc. v. Mealey* (1948) U. S. ; 92 L. Ed. (adv. opinions) 1235, Mr. Justice Frankfurter said at page 1237:

> "It is too late in the day to deny that transportation which leaves a state and enters another state is 'Commerce . . . among the several States' simply because the points from and to are in the same state."

Section 203 of the Federal Motor Carrier Act of 1935 merely put in statutory form the definition of interstate

commerce as defined in the decisions of the United States Supreme Court. This definition reads as follows:

> "The term 'interstate commerce' means commerce between any place within a State and any place in another State or *between places in the same State through another State*, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express or water." (Italics added.)

What is interstate commerce is governed by the definition of interstate commerce announced by the Supreme Court of the United States and by the definition of Congress contained in the Federal Motor Carrier Act of 1935. These definitions state positively that transportation "between places in the same State through another State" is interstate commerce.

It is therefore submitted that your Petitioner was lawfully engaged in transportation of goods by motor vehicle in interstate commerce pursuant to the Certificate of Publice Convenience and Necessity issued by the Interstate Commerce Commission. The only question of fact for determination was whether this transportation was bona fide interstate transportation. That fact had been authoritatively determined by the Interstate Commerce Commission in Petitioner's favor in a proceeding in which the Pennsylvania Public Utility Commission was given every opportunity to appear and present evidence or argument on this question (R. 131a-136a). The Pennsylvania Public Utility Commission is precluded from now collaterally attacking the finding made by the Interstate Commerce Commission. Where a state court has decided a case in conflict with decisions of this Court and the Acts of Congress, this Court has the power and authority to review and correct such erroneous decisions. *Standard Oil Co. of California v. Johnson*, supra. It is urged that this case is a proper one for the exercise of such power.

On September 8, 1948, Petitioner filed with the Interstate Commerce Commission a Petition under Section V, Sub-section D of the Administrative Procedure Act of 1946 (June 11, 1946, C. 324 § 5, 60 Stat. 239; 5 U. S. C. A. § 1004) praying for a construction of its Certificate of Public Convenience and Necessity. Petitioner had hoped to be able to bring to this Court's attention the construction placed upon Petitioner's Certificate by the Interstate Commerce Commission. However, the Pennsylvania Public Utility Commission has delayed the argument on this Petition to the Interstate Commerce Commission so that a construction by the Interstate Commerce Commission cannot be obtained prior to the expiration of the time within which Petitioner must present its Petition to this Court for a Writ of Certiorari to the Superior Court of Pennsylvania.

VI. CONCLUSION

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the error of the Superior Court of Pennsylvania and the Pennsylvania Public Utility Commission may be corrected and that to such end a Writ of Certiorari should be granted and this Court should review the decision of the Superior Court of Pennsylvania, and finally reverse it.

Respectfully submitted,

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